

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

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ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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CHAPTER 68.

HOMESTEAD EXEMPTION.

§ 1. Extent—Rights of wife and children.

The ownership by the occupant of an undivided interest, as of an undivided three-fourths, in land occupied as a homestead, is sufficient ownership to sustain a homestead exemption. *Kaser v. Haas*, 27 Minn. 406, 7 N. W. Rep. 824. An outstanding interest in land held and occupied as a homestead does not, when conveyed during the continuance of the homestead right to the occupant, become subject to the lien of a judgment docketed prior to such conveyance, but while the homestead right exists. *Id.*

An undivided half of two city lots cannot be claimed as a homestead exempt from sale on execution. *Ward v. Huhn*, 16 Minn. 159, (Gil. 142.)

An equitable owner of land may properly claim and hold the same as a homestead, under the homestead law of this state. *Wilder v. Haughey*, 21 Minn. 101. Followed, *Hartman v. Munch*, *Id.* 107.

To constitute a homestead under the act of 1858, exempting a homestead, actual residence upon the premises is necessary. *Tillotson v. Millard*, 7 Minn. 513, (Gil. 419.) To constitute a homestead, the claimant's residence or dwelling must be, or must have been, situated thereon. *Kresin v. Mau*, 15 Minn. 116, (Gil. 87;) *Kelly v. Dill*, 23 Minn. 435. The dwelling being on one tract, and the claimant owning another, which merely touches the first at a corner, the second is not part of the homestead. *Kresin v. Mau*, *supra*.

Where A. paid the consideration for land, and at his request the conveyance was made to B., and A. and his family lived upon and occupied the premises, but B. did not, held, that A. could not claim it as a homestead, because he was not the owner, and B. could not, because she did not live on the land. *Sumner v. Sawtelle*, 8 Minn. 309, (Gil. 272.)

The word "lot," as used in the homestead law, is not synonymous with "tract" or "parcel," but is to be understood in the sense of a village, town, or city lot, according to the survey and plat of the village, town, or city in which the property is situated. *Wilson v. Proctor*, 23 Minn. 14, 8 N. W. Rep. 830.

That a part of the lot on which a party's dwelling-house stands, is used for other purposes, does not affect the right to claim the whole lot as exempt. *Kelly v. Baker*, 10 Minn. 154, (Gil. 124.)

Where a debtor bargains for and purchases real estate, and pays the consideration, and causes the conveyance to be made to his wife, there attaches to the land presumptively a trust in favor of his creditors at the time. *Rogers v. McCauley*, 23 Minn. 384. And proof that the debtor made the purchase, and caused the title to be vested in his wife, for the purpose of making the real estate the place of residence of himself and family, does not tend to disprove the fraudulent intent; nor does proof that, after making the contract of purchase, he placed a house upon the real estate, and always afterwards resided with his family upon it. *Id.* The homestead right of the wife in such a case will not protect her interest from the claims of the creditors. *Id.* *Sumner v. Sawtelle*, 8 Minn. 309, (Gil. 272,) followed.

A conveyance of his homestead by the owner thereof (his wife joining) to a third person, and by such third person to said wife, both conveyances being without valuable consideration, such owner being at the time in embarrassed and failing circumstances, and the conveyances being made for the purpose of transferring the property to the wife, so that she could hold it free from the claims of her husband's creditors, is not fraudulent or void as respects creditors of the husband to whom he was indebted at the time when the conveyances were made. *Morrison v. Abbott*, 27 Minn. 116, 6 N. W. Rep. 455.

The owner cannot, by making the land his homestead, defeat the lien of an attachment previously levied. *Kelly v. Dill*, 23 Minn. 435.

A judgment becomes a lien on a homestead as on other real estate, and although, while it remains a homestead, it is exempt from sale on execution, it may be sold on execution as soon as it ceases to be a homestead, as where the owner sells it. *Folsom v. Carl*, 5 Minn. 333, (Gil. 264.)

Under sections 93, 94, p. 363, Rev. St., as amended by Laws 1854, p. 103, it was not necessary to the validity of a mortgage upon a homestead that the mortgagor's wife should join in executing it. *Olson v. Nelson*, 3 Minn. 53, (Gil. 22.)

Y. (a married man) owning a block of 12 city lots, in which he had an unselected and unascertained homestead, executed a mortgage of the entire block. Held, that the holder of the mortgage (overdue) may properly maintain an action for foreclosure, in which he may have the homestead ascertained and set off, and the remainder of the block sold to satisfy the mortgage. *Coles v. Yorks*, 31 Minn. 213, 17 N. W. Rep. 341.

Where A. holds security upon two tracts of land, one of which is a homestead, and B. holds security only upon the tract not a homestead, A. will not be compelled to re-

sort to the homestead tract first, in order to leave the other tract, as far as may be, to B. *McArthur v. Martin*, 23 Minn. 75.

See *Piper v. Johnston*, cited in note to c. 41, § 18, *supra*; *Smith v. Lackor*, cited in note to c. 66, § 311, *supra*; *Barton v. Drake*, 21 Minn. 299; *Townsend v. Fenton*, 30 Minn. 528, 16 N. W. Rep. 421.

§ 2. Mortgage and conveyance of homestead—Mechanic's lien.

§§ 1 and 2 of this chapter, providing for a homestead limited in area only, without regard to value, and that a mortgage or alienation of the homestead without the wife's signature shall be void, are constitutional and valid. *Cogel v. Mickow*, 11 Minn. 475, (Gil. 354.); *Barton v. Drake*, 21 Minn. 299.

A mortgage by a pre-emptor upon the land pre-empted, executed after the proofs were made pursuant to an agreement made before the proofs, to secure the price of a land-warrant used in paying for the land, is valid. *Jones v. Tainter*, 15 Minn. 512, (Gil. 423.) Such land-warrant is purchase money, and the mortgage takes precedence of a widow's dower and homestead right. *Id.*

A mortgage of a homestead by the owner, a married man, is valid, if it have merely the signature of his wife, although her signature be not attested, nor acknowledged by her. *Lawver v. Slingerland*, 11 Minn. 447, (Gil. 330.)

If the mortgagors, at the time of and ever since the execution of the mortgage, resided on the mortgaged premises as their homestead, and the wife had never in any way released her homestead right to the same or any part thereof, and the mortgage was not given to secure any part of the purchase price thereof, then the mortgage is wholly invalid. *Coles v. Yorks*, 28 Minn. 464, 10 N. W. Rep. 775.

Estoppel of the wife to question the validity of a mortgage executed by the husband only, see *Alt v. Banholzer*, 36 Minn. 57, 29 N. W. Rep. 674.

This section will not authorize a lien, and the enforcement thereof against a debtor's homestead, in favor of the claim of a material-man for materials furnished in the erection of a building on such homestead, there being no agreement between the parties creating the lien. *Coleman v. Ballandi*, 23 Minn. 144.

It is constitutionally competent for the legislature to determine the amount of property that shall be exempted from seizure or sale for the payment of any debt or liability, and to increase or diminish such amount from time to time; but it cannot, in its exemption laws, discriminate between different classes of creditors and kinds of debts. *Id.*

See *Ferguson v. Kumler*, 25 Minn. 183, 188.

§ 3. Levy—Selection of homestead.

Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected or set apart by metes and bounds, such householder shall notify the officer at the time of making such levy of what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone shall be subject to sale under such levy: *provided*, that, in case such householder shall refuse or neglect to make such selection within twenty days after notice of such levy, the officer making such levy shall cause to be surveyed and set off to such person entitled to such exemption in a compact form, including the dwelling-house and its appurtenances, the amount specified in the first section of this act; and the expenses of such survey shall be chargeable on the execution, and collected thereupon. (*As amended 1883, c. 59, § 1.*)

When the land sold on the execution consisted of a farm of 160 acres, and was sold as one tract, and there was a homestead upon it, and the part to be held as such was not selected by the party entitled, nor set apart by the sheriff, the sale was void as to the whole. Following *Ferguson v. Kumler*, 25 Minn. 183, 27 Minn. 156, 6 N. W. Rep. 618. *Kipp v. Bullard*, 30 Minn. 84, 14 N. W. Rep. 364.

§ 4. Same—Survey.

If the plaintiff in the execution shall be dissatisfied with the quantity of land selected and set apart by such householder, as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling-house and its appurtenances, the amount specified in the first section of this act; and the expenses of such survey shall be chargeable on the execution, and collected thereon. (*Id.*)

The fact that the homestead which a party has actually made, and is occupying and claiming as such, includes more land than is permitted to be included within the limits

of an exempt homestead, under the provisions of § 1, does not render the whole of such homestead tract liable to sale on execution, even though such party wholly neglect to define the boundaries of his homestead within the limits prescribed by that section. The ruling upon this point, in the decision of this case on a former appeal, (25 Minn. 183,) adhered to. *Ferguson v. Kumler*, 27 Minn. 156, 6 N. W. Rep. 618.

§ 5. Same—Sale.

After the selection of [or] survey shall have been made, the officer making the levy may sell the property levied upon, and not included in such homestead, in the same manner as provided in other cases for the sale of real estate on execution, and in giving a deed or certificate of the same may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity set off as such homestead, as aforesaid. (*Id.*)

§ 6. Exemption of dwelling when land owned by another.

See *Hamlin v. Parsons*, 12 Minn. 108, (Gil. 59, 60.)

§ 8. Sale of homestead—Removal—Effect.

Since the enactment of this statute, a sale of the homestead, even with a fraudulent intent, will not make the same liable to forced sale on execution. *Morrison v. Abbott*, 27 Minn. 116, 6 N. W. Rep. 455. Followed, *Ferguson v. Kumler*, 27 Minn. 156, 6 N. W. Rep. 618.

See, also, *Baldwin v. Rogers*, 28 Minn. 544, 11 N. W. Rep. 77; *Kaser v. Haas*, 27 Minn. 406, 407, 7 N. W. Rep. 824; *Folsom v. Carli*, 5 Minn. 333, (Gil. 264); *Donaldson v. Lamprey*, 29 Minn. 18, 11 N. W. Rep. 116; *Kipp v. Bullard*, 30 Minn. 84, 14 N. W. Rep. 304.

§ 9. Implied abandonment.

Where the owner of a homestead has permanently and unequivocally abandoned it, by removing from it, and acquiring a new homestead elsewhere, his right of exemption to the first is lost. This is not such a removal as is contemplated or permitted by § 8. Hence, filing notice of claim under this section, under such circumstances, will not preserve or continue his right of exemption. *Donaldson v. Lamprey*, 29 Minn. 18, 11 N. W. Rep. 119.

See, as to abandonment, *Williams v. Moody*, 35 Minn. 280, 28 N. W. Rep. 510.

See, also, *Russell v. Speedy*, (Minn.) 37 N. W. Rep. 340; *Kaser v. Haas*, 27 Minn. 406, 407, 7 N. W. Rep. 824.

CHAPTER 69.

MARRIED WOMEN.

*§ 1. Property rights.

As respects the statutory separate estate of a married woman, she has the same absolute right to the use and enjoyment thereof as a *feme sole*; and, to the extent necessary to the full exercise and protection of such right, she must be regarded as having a separate legal existence, distinct from her husband, and wholly unaffected by her marriage relation. *Spencer v. St. Paul & Sioux City R. Co.*, 22 Minn. 29. Followed, *Wampach v. St. Paul, etc., R. Co.*, 22 Minn. 34.

The wife may, with the consent of the husband, have the exclusive benefit of services performed in the family. *Mason v. Dunbar*, (Mich.) 5 N. W. Rep. 432. But see *Neale v. Hermans*, (Md.) 5 Atl. Rep. 424.

Wife's earnings about her husband's property. *Hamill v. Henry*, (Iowa,) 28 N. W. Rep. 32; *Triplett v. Graham*, (Iowa,) 12 N. W. Rep. 143.

Replevin by the wife against the husband. *White v. White*, (Mich.) 25 N. W. Rep. 490.

Promissory note executed by the husband to a third person, and transferred to the wife. *Knox v. Moser*, (Iowa,) 28 N. W. Rep. 629.

As to torts committed against the wife, see *McLimans v. City of Lancaster*, (Wis.) 23